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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/815,330 | 03/23/2001 | John A. Zaia | 1954-333 | 4689 |

6449 7590 05/30/2003

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| EXAMINER |
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SCHEINER, LAURIE A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1648 | 17 |

DATE MAILED: 05/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

| | |
|--------------------------------------|------------------------------------|
| Application No. 09/815,330 | Applicant(s) Zaia et al. |
| | Examiner Laurie Scheiner |
| | Art Unit 1648 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on May 15, 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 2 and 23 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 2 is/are allowed.

6) Claim(s) 23 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

| | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 2 and 23 are pending.

Claim 2 is allowable.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond et al. (US Patent No. 6,156,317) in view of Gallina et al. (JOURNAL OF VIROLOGY, 1999 February, 73 (2) 1468-78).

Diamond et al. clearly teach a mutant cytomegalovirus protein (pp65) which elicits a CTL response against cells infected with cytomegalovirus. Please see throughout for peptides and immunologically functional variants that can activate CTLs without active viral replication, which may be used for eliciting a cellular immune response against HCMV.

Diamond et al. are essentially silent with respect to pp65 having a protein kinase activity, or lack of it with respect to the variant peptides.

Gallina et al. teach that wild-type pp65 may not in fact be responsible for the protein kinase activity since a recognizable kinase consensus is lacking. Gallina et al. conclude that PIk1, or the pp65-PIk1 association may be responsible for the kinase activity. Thus, experiments are inconclusive with respect to pp65 possessing protein kinase activity. That is, whether or not all isolated pp65 is inherently lacking in protein kinase function is unclear.

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Taken with the teachings of Gallina et al., Diamond et al. teach that which is broadly claimed since both wild-type, and mutant pp65 would inherently lack kinase activity due to absence of a required structure/function consensus.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laurie Scheiner, whose telephone number is (703) 308-1122. Due to a flexible work schedule, the examiner's hours typically vary each day. However, the examiner can normally be reached Monday thru Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (703) 308-4027.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (703) 308-0196.

Correspondence related to this application may be submitted to Group 1600 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Official communications should be directed toward one of the following Group 1600 fax numbers: (703) 308-4242, (703) 305-3014, (703) 872-9306 or (703) 872-9307. Informal communications may be submitted directly to the Examiner through the following fax number: (703) 746-5226.


Laurie Scheiner/LAS
May 26, 2003


LAURIE SCHEINER
PRIMARY EXAMINER